BRB No. 00-0668 BLA

WILLIAM H. SALYERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GENERAL TRUCKING CORPORATION	)	DATE ISSUED:
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	_____
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Frederick D. Neusner, Administrative Law Judge, United States Department of Labor.

Lawrence L. Moise, III (Office of Robert Austin Vinyard), Abingdon, Virginia, for claimant.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer.

Edward Waldman (Judith E. Kramer, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (94-BLA-0476) of Administrative Law Judge Frederick D. Neusner ordering the payment of medical expenses on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act).[1] This case is before the Board for the second time. Initially, Administrative Law Judge Reno E. Bonfanti ordered employer to pay certain bills for prescriptions and physician's office visits, and to reimburse claimant for reasonable travel costs, after finding that employer failed to establish rebuttal of the presumption set forth in *Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14 BLR 1-116 (1990)(*en banc*, with Brown, J. dissenting, and McGranery, J., concurring and dissenting).

Employer appealed to the Board. On appeal, the Board affirmed Judge Bonfanti's finding that employer failed to establish rebuttal of the presumption set forth in *Stiltner*. *See Salyers v. General Trucking Corp.*, BRB No. 95-1469 BLA (Mar. 27, 1997)(unpub.). Additionally, the Board affirmed Judge Bonfanti's finding that claimant's travel expenses were reasonable inasmuch as the Board held it was supported by substantial evidence. *Id.* The Board summarily denied employer's Motion for Reconsideration on November 5, 1997.

[1]The Department of Labor amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Employer appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit court remanded this case for consideration under *Gulf & Western Industries v. Ling*, 176 F.3d 226, 21 BLR 2-570 (4th Cir. 1999). *See General Trucking Corp. v. Salyers*, 175 F.3d 322, 21 BLR 2-565 (4th Cir. 1999). The Fourth Circuit court stated that the two circumstances outlined in the Board's opinion were not "the exclusive means of rebutting the presumption."[2] *Id.* The Fourth Circuit court stated, as outlined in *Ling*, the party opposing payment may also establish rebuttal by producing credible evidence that the miner was treated for a pulmonary condition that had not manifested itself, to some degree, at the onset of his disability or for a preexisting pulmonary condition adjudged not to have contributed to his disability. *Id.*

Subsequently, the Board issued an order remanding this case to the Office of Administrative Law Judges for further consideration consistent with the Fourth Circuit court's decision. On remand, Administrative Law Judge Frederick D. Neusner [hereinafter, the administrative law judge] found that employer successfully rebutted the presumption set forth in *Stiltner*. Decision and Order at 7. However, the administrative law judge also found that claimant established that the medical bills he submitted were related to the treatment of his pneumoconiosis. Decision and Order at 11-13. Accordingly, the administrative law judge found that employer was responsible for the payment of claimant's medical bills.

In this appeal currently pending before us, employer asserts that the administrative law judge erred in finding employer liable for payment of claimant's submitted medical expenses. Employer's Brief at 12-26. Employer contends that the administrative law judge erred in ordering employer to reimburse claimant and the Black Lung Disability Trust Fund (Trust Fund) for claimant's travel expenses that were related to his medical treatment. Employer's Brief at 26-27. Additionally, employer asserts that the evidence fails to establish that employer is liable for the full amount of claimant's pulmonary treatment. Employer's Brief at 28. The Director, Office of Workers' Compensation Programs (the Director), has filed a

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[2]The United States Court of Appeals for the Fourth Circuit noted that the Board concluded that the *Stiltner* presumption could be rebutted only by:

> showing "that (1) the expenses in question were not reasonable for the treatment of any of claimant's pulmonary disease...or (2) the treatment is for a condition completely unrelated to claimant's pulmonary condition (e.g., treatment for a heart condition, broken bone, or bad back)."

See General Trucking Corp. v. Salyers, 175 F.3d 226, 21 BLR 2-570 (4th Cir. 1999)(citations omitted).

response brief, asserting that the administrative law judge erred in finding that employer established rebuttal of the *Stiltner* presumption. Director's Brief at 10-14. The Director additionally asserts that substantial evidence supports the administrative law judge's finding that the disputed medical treatments were for claimant's pneumoconiosis. Director's Brief at 14-18. Claimant responds, urging affirmance of the administrative law judge's award of medical benefits. Claimant's Letter at 1-2. Employer has filed reply briefs.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, for the duration of the lawsuit, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit will not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). In the present case, the Board established a briefing schedule by order issued on March 2, 2001, to which the Director, claimant, and employer have responded.[3] Based on the briefs submitted, and our review, we hold that the disposition of this case is not impacted by the challenged regulations. Therefore, the Board will proceed to adjudicate the merits of this appeal.

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[3]The Director, Office of Workers' Compensation Programs (the Director), indicated that revisions to the regulations at 20 C.F.R. §§718.201, 725.701 merely codify the existing case law of the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises. Director's Brief in Response to the Board's March 2, 2001 Order at 1-3. Therefore, the Director has indicated that the Board may decide the instant case. Claimant asserts that the revised regulations will not alter the outcome of this case.

Employer asserts that the new regulations may affect the outcome of this case and that the Board may not decide the matter. Employer's Brief in Response to the Board's March 2, 2001 Order at 1-3. Employer contends that the revised Section 725.701(f) contains a provision that treating physicians may be given controlling weight pursuant to 20 C.F.R. §718.104(d), after consideration of the criteria outlined in the regulation, and that that provision is not limited to prospective application. Employer's Brief in Response to the Board's March 2, 2001 Order at 3-4. Regardless of when the provision in Section 725.701(f) regarding treating physicians is applicable, such a provision does not affect the instant case because the administrative law judge here rationally accorded greater weight to the opinion of the miner's treating physician, Dr. Cherry. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993).

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was awarded benefits under Part B of the Act, 30 U.S.C. §§921-25, by the Social Security Administration. On April 7, 1978, claimant filed for Medical Benefits Only pursuant to Section 11 of the Black Lung Benefits Reform Act of 1977, Pub. L. No. 95-239, §11, 92 Stat. 101 (1978), codified at 30 U.S.C. §924(a), as implemented by 20 C.F.R. §725.701(A) (2000) *et seq*. Director's Exhibit 1. Employer agreed on July 27, 1984 that claimant met the standards of total disability under the Act. Director's Exhibit 3. Employer further agreed to accept liability for medical benefits, *id*., and an award of medical benefits was entered by the district director on August 6, 1984. Director's Exhibit 4. Liability for medical benefits was thereby determined, *see Lute v. Split Vein Coal Co*., 11 BLR 1-82 (1987), and the sole issue on appeal is the propriety of reimbursement for any particular medical or travel charges.

The administrative law judge initially found that employer presented medical opinion evidence that successfully rebutted the *Stiltner* presumption. Decision and Order at 7. The administrative law judge then stated that he must reweigh the entire record to determine "whether Claimant is entitled to the reimbursement he seeks." *Id.* In weighing the entire record, the administrative law judge found that "Claimant sustained the burden of proof that all his pulmonary treatment was provided for pneumoconiosis within the meaning of the Act and regulations." Decision and Order at 11. In so finding, the administrative law judge credited the opinion of Dr. Cherry, who is Board-certified in internal medicine and pulmonary disease, and whose opinion is "based on the data he collected in two comprehensive physical examinations of the [miner], and in follow up office visit examinations." Decision and Order at 11. The administrative law judge found Dr. Cherry's opinion to be corroborated by the observations of Drs. Miller and Rogers, who were the miner's attending physicians.[4] *Id.*

[4]Claimant testified that Dr. Rogers treated him from 1972-1988. Hearing Transcript at 27. In 1994, Dr. Miller noted that the miner had been "under his care for an extended period of time, since about July of 1986, to be precise." Claimant's Exhibit 2. Claimant testified that he was referred to Dr. Cherry by Dr. Rogers, who retired in 1989. Hearing Transcript at

27-28, 34.

Regarding employer's expert, Dr. Branscomb,[5] the administrative law judge found that:

> As Dr. Branscomb did not examine or treat the patient at all, it is appropriate to accord greater weight the to the [sic] opinion of Dr. Cherry, who was professionally better qualified and who examined and treated the miner in two comprehensive examinations and in a series of follow up office visits. Moreover, even though Drs. Rogers and Miller were not Board certified in Internal Medicine, they were Board certified [i]n Family Practice, and as the attending physicians for Mr. Salyers over a very long period of time, the corroborating clinical observations they each noted credibly supported the opinion of Dr. Cherry.

Decision and Order at 13.

Employer first asserts that the administrative law judge erred by entitling claimant to the presumption of clinical and legal pneumoconiosis when the prior award was based on clinical pneumoconiosis.[6] Employer's Brief at 12-13. Therefore, employer asserts that the administrative law judge impermissibly shifted the burden of proof to employer by

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[5]Employer asserts that the administrative law judge mischaracterized Dr. Branscomb's opinion inasmuch as "Dr. Branscomb did not limit his opinion to medical pneumoconiosis." Employer's Brief at 23-24. Dr. Branscomb stated that "COPD is a term which includes emphysema and other obstructive diseases" and that "[n]either coal workers' pneumoconiosis nor its nickname, black lung disease, is included in the terms COPD or emphysema. Coal workers[']s pneumoconiosis does not cause COPD or emphysema." Employer's Exhibit 4. Dr. Branscomb explained that COPD and pneumoconiosis "are completely different processes with different causes and different treatment requirements," and concluded that "[a]ll of the medications and treatments listed in the documents...are for COPD and none is for CWP." *Id.* Therefore, while Dr. Branscomb did note that "any pulmonary condition significantly aggravated by coal dust...is included with the definition of pneumoconiosis in the legal setting," he made several statements indicating that he did not believe that chronic obstructive pulmonary disease [COPD] could be encompassed in the legal definition of pneumoconiosis, which is contrary to Fourth Circuit case law. *See Director, OWCP v. Richardson*, 94 F.3d 164, 21 BLR 2-373 (4th Cir. 1996); *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995).

[6]Employer asserts that because the existence of legal pneumoconiosis was never established, it was error for the administrative law judge to preclude employer from litigating the cause of claimant's COPD. Employer's Brief at 13-14.

"bundl[ing] together all of [the miner's] pulmonary problems and holding them to be indistinguishable based on the prior award of wage benefits." Employer's Brief at 13. Employer contends that the administrative law judge should have discredited the opinions of Drs. Cherry, Rogers, and Miller "because they believe that all pulmonary diseases are interrelated and that is contrary to Fourth Circuit authority." Employer's Brief at 24.

In essence, it appears that employer is asserting that rebuttal under *Salyers* and *Ling* has been established in this case based on Dr. Branscomb's opinion, which constitutes credible evidence that the treatment rendered is for a pulmonary disorder, *i.e*. the miner's chronic obstructive pulmonary disease [COPD] due to smoking, apart from those previously associated with the miner's disability. Claimant's award of benefits under Part B of the Act by the Social Security Administration is not in the record, but employer asserts that it was premised on a finding of clinical pneumoconiosis rather than legal pneumoconiosis. A finding of clinical pneumoconiosis does not preclude a finding of legal pneumoconiosis. *See generally Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995)(legal definition of pneumoconiosis is significantly broader than medical definition); *Barber v. U.S. Steel Mining Co., Inc.*, 43 F.3d 899, 19 BLR 2-61 (4th Cir. 1995). As the administrative law judge notes, in proving his entitlement to medical benefits, claimant relied on employer's stipulation that claimant was totally disabled due to pneumoconiosis. Director's Exhibit 3. However, no inquiry was made into what constitutes the pneumoconiosis, clinical or legal, that claimant was totally disabled from, and the issue regarding the cause of claimant's COPD was not previously addressed.

Employer asserts that claimant never established legal pneumoconiosis because it did not need to be addressed under Part B. Employer's Brief at 13. Employer is contending that because the cause of claimant's COPD was never fully litigated prior to making his claim for medical benefits, employer should now be able to litigate the cause of the miner's COPD in defense of paying claimant's medical benefits. Contrary to employer's assertion, in this medical benefits only claim, when claimant has already established entitlement, the miner is not required to prove the etiology of his COPD. To require claimant to do so is tantamount to compelling claimant to relitigate an element of entitlement previously established, namely the existence of pneumoconiosis, which he is not required to do. *See Ling*, 176 F.3d at 232 and n.13, 21 BLR at 2-581, *citing Stiltner*, *supra* ("[t]he time for that argument has passed with the prior adjudication of disability").

Regarding the administrative law judge's weighing of the medical opinion evidence, employer asserts that in crediting the opinions of Drs. Cherry, Miller, and Rogers, the administrative law judge erred in mechanically according these physicians' opinions greater weight based on their status as the miner's treating and examining physicians. Employer's Brief at 14-16, 20. Additionally, employer contends that the administrative law judge failed to determine whether the opinions of Drs. Cherry, Miller, and Rogers were reasoned and

documented in comparison to the opinion of Dr. Branscomb. Employer's Brief at 16-18, 21-22, 25-26.

Contrary to employer's assertions, the administrative law judge thoroughly discussed all the medical opinions in the record, considering the qualifications of the physicians,[7] the explanations in their medical opinions, and the documentation underlying their opinions. Decision and Order at 7-11. The administrative law judge accorded greater weight to Dr. Cherry's opinion inasmuch as the administrative law judge found this physician to be better qualified than Dr. Branscomb. Decision and Order 13. Moreover, the administrative law judge noted that Dr. Cherry "treated the miner in two comprehensive examinations and in a series of follow up visits" and that his opinion was supported by the opinions of Drs. Rogers and Miller, who treated claimant "over a very long period of time," *see* n.4, *supra*. Decision and Order at 13. Accordingly, the administrative law judge did not mechanically credit the treating physicians, but, within his discretion, found Dr. Branscomb's opinion to be outweighed by the contrary opinion of Dr. Cherry, in conjunction with the opinions of Drs. Rogers and Miller, whose "corroborating clinical observations they each noted credibly supported the opinion of Dr. Cherry." *Id*; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993); *Berta v. Peabody Coal Co.*, 16 BLR 1-69 (1992); *see also Island Creek Coal Co. v. Compton*, 211 F.3d 203, BLR (4th Cir. 2000).

Moreover, Dr. Branscomb made several statements in his opinions that necessarily affect the credibility of his conclusions in relation to 20 C.F.R. §725.701. Dr. Branscomb opined that the miner's "CWP...is producing no symptoms nor is it aggravating any other condition," Director's Exhibit 5, and that "even though it has been determined that [claimant] has pneumoconiosis the medical records fail to show a sufficient quantity and distribution of that process for one reasonably to attribute his respiratory symptoms to that process," Employer's Exhibit 1. The substance of these conclusions by Dr. Branscomb is that claimant is not totally disabled due to pneumoconiosis, which claimant has already established. Thus,

[7]Employer asserts that the administrative law judge erred in citing to the qualifications of Drs. Miller and Rogers, who are Board-certified in family medicine, inasmuch as this does not make these physicians more qualified in the area of pulmonary disease than Dr. Branscomb. Employer's Brief at 16, 22-23. We hold any error the administrative law judge may have made in this regard to be harmless, *see Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), inasmuch as this was only one factor in the administrative law judge's decision to give determinative weight to the opinion of Dr. Cherry, who is better qualified than Dr. Branscomb, and whose conclusions are supported by the opinions of Drs. Rogers and Miller. Decision and Order at 13.

these statements render Dr. Branscomb's opinion suspect as legitimate proof that claimant's medical bills are not reimbursable, *see Ling, supra*; *Stiltner, supra,* especially in light of the new regulation which states that:

> [e]vidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment is insufficient to defeat a request for coverage of any medical service or supply under this subpart.

20 C.F.R. §725.701(f).[8] Additionally, Dr. Branscomb's assertions that "no one would expect the x-ray manifestations of early simple pneumoconiosis to worsen after leaving the mines" and that "simple pneumoconiosis...does not fluctuate in severity," Employer's Exhibit 1, are contrary to the law of the Fourth Circuit.[9] *See Eastern Associated Coal Corp. v. Director,*

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[8]While the old regulation did not include a similar provision, the new regulation is consistent with current Fourth Circuit case law which states that when a physician premises his opinion on an assumption contrary to an established fact, his opinion is inherently untrustworthy. *See Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995) *see also Curry v. Beatrice Pocahontas Coal Co.*, 67 F.3d 517, 20 BLR 2-1 (4th Cir. 1995), *rev'g on other grds*, 18 BLR 1-59 (1994)(en banc); *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994).

[9]Employer also asserts that the administrative law judge erred in relying on the principle of the progressive nature of pneumoconiosis in his weighing of the medical opinion

OWCP [Scarbro], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

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evidence inasmuch as this principle is "unsupported in the record or by any reliable scientific data." Employer's Brief at 18-19. Contrary to employer's assertion, claimant need not prove that pneumoconiosis is a progressive disease inasmuch as the U.S. Supreme Court and the U.S. Court of Appeals for the Fourth Circuit recognize the progressive nature of pneumoconiosis. *See discussion, supra*; *Mullins Coal Co. of Virginia v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

Notwithstanding the administrative law judge's weighing of the medical evidence, employer asserts, citing *Lane Hollow Coal Co. v. Director, OWCP [Lockhart]*, 137 F.3d 799, 21 BLR 2-302 (4th Cir. 1998), that it should not be liable for the medical expenses in this claim because the U.S. Department of Labor delayed in providing employer with claimant's treatment records. Employer's Brief at 20. Employer claims that this delay prohibited it "from submitting evidence on equal footing with claimant's proof." *Id.* In *Lockhart*, the Fourth Circuit court held that due to the Department of Labor's inexcusable, seventeen year delay in notifying the employer of the deceased miner's claim, the employer was deprived of the opportunity to mount a meaningful defense, which would include an opportunity to examine a miner and, therefore, was denied due process. *See Lockhart, supra.* In the instant case, employer was timely notified of the miner's claim to seek medical benefits. Director's Exhibit 4. Subsequent to its notice of the miner's claim, employer could have sought a medical examination of claimant pursuant to 20 C.F.R. §725.701A(g) (2000).[10] Employer fails to explain why it did not seek to have claimant examined especially when its own expert, Dr. Branscomb, stated that it would be helpful to obtain an examination of claimant. Therefore, we reject employer's argument.

Employer next asserts that the administrative law judge erred in ordering employer to pay claimant's travel expenses that were related to his medical treatment. Employer's Brief at 26-27. When this case was previously before the Board, it rejected employer's contentions and affirmed Judge Bonfanti's finding that claimant's travel to pulmonary specialists was reasonable inasmuch as the Board held his finding was supported by substantial evidence. *See Salyers*, BRB No. 95-1469 BLA at 4. In order for the Board to alter a previous holding, employer must set forth an exception to the law of the case doctrine, *i.e.*, a change in the underlying fact situation, intervening controlling authority demonstrating that the initial decision was erroneous, or a showing that the Board's initial decision was either clearly erroneous or a manifest injustice. *See Church v. Eastern Associated Coal* Corp., 20 BLR 1-8 (1996); *Coleman v. Ramey Coal* Co., 18 BLR 1-9 (1993); *see also Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989)(2-1 opinion with Brown, J., dissenting). Because employer

[10]The amended regulations also provide that a miner seeking medical benefits "may be required to submit to a medical examination requested by an identified operator." 20 C.F.R. §725.702(g).

has not set forth any valid exception to the law of the case doctrine, we adhere to our previous affirmance of Judge Bonfanti's finding at 20 C.F.R. §725.701(d) (2000).[11] *See* 20 C.F.R. §725.701(d); *Church, supra*; *Coleman, supra*; *see also Williams, supra.*

[11]No changes have been made to the provision concerning recovery of reasonable travel costs in the amended regulations. *Compare* 20 C.F.R. §725.701(d) with 20 C.F.R. §725.701(d) (2000).

Finally, employer contends, citing *Stiltner*, that even if the administrative law judge's finding, that claimant is entitled to medical benefits, is correct, the record does not establish that claimant is entitled to the full amount of those expenses.[12] Employer's Brief at 28. Employer reasons that because the administrative law judge primarily relied on Dr. Cherry's opinion and this physician found that only 50% of the miner's treatment was for pneumoconiosis, employer should not be liable for more than that amount. *Id.* However, Dr. Cherry did not opine that 50% of claimant's treatments were for pneumoconiosis and 50% of his treatments were for COPD. Rather, Dr. Cherry found claimant's pneumoconiosis and COPD to be two equal causes of his "clinical problems, i.e. shortness of breath and dyspnea on exertion." Claimant's Exhibit 1. Therefore, all of Dr. Cherry's treatment for claimant's respiratory impairment is covered by the regulations and is reimbursable. *See Stiltner*, *supra*; *Ling*, *supra*.

Accordingly, the administrative law judge's Decision and Order awarding medical benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

[12]As employer notes, the Fourth Circuit court in *Stiltner* stated that a treating physician seeking payment must separate out those expenses related to pulmonary disorders from those expenses related to non-pulmonary disorders. *See Doris Coal Co. v. Director, OWCP* [*Stiltner*], 938 F.2d 492, 15 BLR 2-135 (4th Cir. 1991), *aff'g in part and rev'g in part Stiltner v. Doris Coal Co.*, 14 BLR 1-116 (1990)(*en banc*, with Brown, J. dissenting, and McGranery, J., concurring and dissenting). Thus, the instant case is distinguishable from *Stiltner* because claimant's COPD is a pulmonary disorder.